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No. 90-1875

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In The

Supreme Court of the United States

October Term, 1991

EUGENE C. BARD, et al.,

Petitioners,

vs.

DONALD L. CROCKETT, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

JOINT RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Eighth Circuit correctly affirmed the District Court's dismissal of plaintiffs' Amended Petition for failure to state a claim upon which relief can be granted.

PARTIES TO PROCEEDINGS BELOW

Petitioners, Eugene C. Bard, James F. Bard and Max L. Bard were plaintiffs-appellants below. Defendants-appellees below were Donald L. Crockett, Crockett Oil Company, Burl F. Hamilton, Joplin Oil Company, Conoco, Inc., E. I. DuPont de Nemours & Company, Total Petroleum Inc., Mobil Corporation, & Mobil Oil Corporation, Sun Refining & Marketing Company, First National Mercantile Bank & Trust Company of Joplin, Mo., Mercantile Bankcorporation, Inc., Lawrence Hickey, Jr., Virginia Hickey, United Missouri Bank of Joplin, Mo., United Missouri Bancshares, Inc., Larry H. Martin, L & E Martin Oil Company, Texaco, Inc., David Lee Garrison, Robert W. Henson, Maynard L. Henson, Henson Oil Co., Phillips Petroleum Company, Robert M. Jeffries, Ida J. Bennett, Midwestern Oil & Supply Company, Tri Angle Refineries, Inc., Kerr-McGee Corporation, Exxon Corporation, Fina Oil & Chemical Company, Derby Refining Company, Coastal Refining & Marketing, Inc., Ray W. Grace, Jerry J. Perry, Grace Energy Corporation, and John Doe or Richard Doe.

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JOINT RESPONDENTS' BRIEF IN OPPOSITION

Respondents Mobil Corporation, et al., respectfully pray that the Court deny the Petition for Writ of Certiorari seeking review of the Eighth Circuit's Order entered May 10, 1991.

STATEMENT OF THE CASE

On March 17, 1989, petitioners filed a *pro se* RICO complaint in the United States District Court for the Western District of Missouri against thirty-six defendants. Upon the motion of several defendants, the District Court ordered plaintiffs to file a more detailed complaint. After plaintiffs' filed their Second Amended

Complaint the district court granted defendants' motions to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that plaintiffs failed to plead "facts indicating an enterprise for purposes of RICO." App. 11. In a *per curiam* opinion the Eighth Circuit affirmed.

REASONS FOR DENYING THE WRIT

I. Petitioners' failure to plead an "enterprise" does not raise an issue worthy of the Court's attention.

The Court should deny the petition for two fundamental reasons. First, petitioners' failure to clearly explain their position alone is grounds for denying the writ. Supreme Court Rule 14.5. Second, petitioners' request for review of a dismissal without prejudice presents no question worthy of the Court's attention.[1]

Petitioners' assertion that the Eighth Circuit's decision conflicts with cases from this Court or from other circuits is without merit. Contrary to petitioners' allegations, the decision below does not conflict with *H. J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989), or *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985). It also is not in conflict with *United States v. Master*, 924 F.2d 1362 (7th Cir.), *cert. denied*, 111 S.Ct. 2019 (1991), *Roeder v. Alpha Industries, Inc.*, 814 F.2d 22 (1st Cir. 1987), *Barticheck v. Fidelity Union Bank*, 832 F.2d 36 (3d Cir. 1987), or *Sun*

[1] Although petitioners present several questions in their petition, all the questions focus on the propriety of the district court order dismissing the complaint for failure to state a claim upon which relief can be granted.

Savings & Loan Ass'n v. Dierdorff, 825 F.2d 187 (9th Cir. 1987).[2]

The district court dismissed petitioners' complaint because they had not pleaded an "enterprise" as defined by *United States v. Bledsoe*, 674 F.2d 647 (8th Cir.), *cert. denied*, 459 U.S. 1040 (1982), and *United States v. Flynn*, 852 F.2d 1045 (8th Cir.), *cert. denied*, 488 U.S. 974 (1988).

This Court's cases cited by petitioners do not deal with the "enterprise" element of a RICO claim. For example, in *Sedima* that Court held that a criminal RICO conviction is not a prerequisite to civil RICO liability. The Court also defined the type of injury that must be pleaded in order to state a civil RICO claim.

The other cases cited by petitioners are equally inapplicable. For example, *Northwestern Bell*, *Barticheck* and *Sun Savings* do not address the element of "enterprise" and focus instead on the separate elements of "conduct" and "pattern." *Northwestern Bell* and *Barticheck* deal only with what establishes a "pattern"; *Sun Savings* focuses on "conduct". Nor do *Roeder* and *Masters* conflict with the decision of the Eighth Circuit. *Roeder* holds that under RICO, a corporation may be either a "person" or an "enterprise," but not both. *Masters* holds only that a law firm, two police departments and three individuals can

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[2] *United States v. R. J. Reynolds Tobacco Co.*, 416 F.Supp. 316 (D. N. J. 1976), also cited by plaintiffs, is not a RICO case. Its only arguable application here is its statement that the Court "can speak with authority to assure uniformity of federal law among the several circuits and districts." *Id.* at 320. Respondents do not question the Court's supervisory powers.

constitute an "enterprise." Petitioners' contention of conflict among the circuits is incorrect.

Simply stated, the cases cited by petitioners have no application here. The Court should not grant certiorari to deal with abstract conflicts in the circuits on the law of RICO. *See The Monrosa v. Carbon Black Export*, 359 U.S. 180, 184 (1959).

CONCLUSION

For the foregoing reasons, petitioners' alleged conflict among Circuits does not exist. Petitioners present no question worthy of this Court's attention, and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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